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In the

Supreme Court of the United States

OCTOBER TERM, 1966

No. 985

NEUHOFF BROS. PACKERS, INC.,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

FRITZ L. LYNE,
1400 Adolphus Tower,
Dallas, Texas,
Counsel for Petitioner.

WARLICK PRESS, INC.—2263 VALDINA STREET—DALLAS—ME 1-3130

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Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above-entitled case on June 17, 1966.

CITATION TO OPINION BELOW

The opinion of the Court of Appeals, printed in Appendix B hereto, infra p. B-1, is reported in 362 F. 2d 611.

JURISDICTION

The judgment of the Court of Appeals was entered on the 17th day of June, 1966, R. 20, Appendix B hereto, p. B-1, infra. Rehearing was denied on November 16, 1966,

R. 53; Appendix B hereto, p. B-14, infra. The jurisdiction of this Court is invoked under 28 U.S.C.A., § 1254(1).

QUESTIONS PRESENTED

1. Has Petitioner been denied due process of law by the action of the National Labor Relations Board[1] in finding Petitioner guilty of the unfair labor practice of refusing to bargain with a union when the Petitioner has raised substantial factual issues as to whether or not the union is the duly certified bargaining agent of the Petitioner's employees, and such unfair labor practice finding of the Board was made without any hearing.

2. Can the Board, in an unfair labor practice proceeding, find Petitioner guilty of the unfair labor practice of refusing to bargain with a union without affording the Petitioner any hearing of any kind or character under the following circumstances:

a. In a certification election concerning the Petitioner's employees a majority of the votes cast were against the petitioning union;

b. The Union objected to certain conduct affecting the outcome of this election and it was set aside based solely upon an ex parte investigation of the Board's Regional Director and no hearing was had in connection therewith;

c. In a second election a majority of the votes cast were in favor of the petitioning union;

d. The Petitioner filed objections to union conduct and to conduct of Board employees who held such elec-

[1] The National Labor Relations Board will be referred to in this petition as the "Board".

tion and maintained that such conduct prejudicially affected the outcome of such second election;

e. The objections of Petitioner to the conduct affecting the outcome of the second election were overruled by the Board's Regional Director based upon his ex parte investigation and no hearing was had in connection therewith;

f. The Petitioner requested a hearing with respect to the actions of the Board's Regional Director in setting aside the first election and in refusing to set aside the second election and offered proof that such actions on the part of the Board's Regional Director were erroneous.

3. When an employer has raised substantial factual issues as to whether or not a union is the duly certified bargaining agent of its employees, is it incumbent upon the Board, at some time prior to finding the employer guilty of the unfair labor practice of refusal to bargain, to afford such employer a hearing with respect to whether such union is, in fact, the duly certified bargaining agent of such employees.

4. Under the provisions of the Labor Management Relations Act, 1947, and the Administrative Procedure Act, may the Board, in an unfair labor practice proceeding wherein an employer is charged with the unfair labor practice of refusing to bargain, enter an order finding such employer guilty of such unfair labor practice without affording the employer any hearing with respect to whether or not the union is the duly certified bargaining agent of the employer's employees.

STATUTES INVOLVED

The statutory provisions involved are § 10(b) of the Labor Management Relations Act, 1947, 29 U.S.C.A. § 160,

C. 120 § 10, 61 Stat. 146, as amended, § 72 Stat. 945, as amended, § 704(d), 706, 73 Stat. 544 and § 5 of the Administrative Procedure Act, 5 U.S.C.A., § 1004, C. 324, § 5, 60 Stat. 239. The above statutes are printed in Appendix A, infra, pp. A-1 through A-4.

STATEMENT

This suit arises out of the Board's Decision that the Petitioner was guilty of the unfair labor practice of refusal to bargain with the United Packinghouse, Food and Allied Workers, AFL-CIO[2] (Rl, 382-385)[3]. This finding was made by the Board without any hearing of any kind or character being afforded to Petitioner and was, as pointed out by the Court below, "in effect, the grant of summary judgment" (Appendix B hereto, page B-4, 362 Fed. 2d 611). The court below had jurisdiction of the case pursuant to Sec. 10(f) of the Labor Management Relations Act, 1947.

In July of 1964 the Union filed a Petition for Certification as bargaining agent of Petitioner's employees (Rl, 1). A hearing was held on the Union's "Petition for Certification" and the Board's Regional Director rendered a "Decision and Direction of Election" during August of 1964 (Rl, 13).

In September of 1964 an election was conducted resulting in 347 votes being cast against the union, 315 votes being cast for the union and 43 ballots being challenged

[2] This Union will hereinafter be referred to as "The Union".

[3] References to the Record, such as "Rl, ...", will refer to the page number in the Transcript of the Record, such entire Transcript, consisting of 385 pages, being indexed in the Record in this Court as "Printed Record page 1".

(Rl, 42). The Union filed numerous objections to certain alleged conduct of Petitioner (Rl, 45-51), and in January of 1965 the Board's Regional Director, after conducting an ex parte investigation over Petitioner's objections, sustained two of the Union's objections to the election and set the election aside (Rl, 53-92).

The Board's Regional Director, after conducting his ex parte investigation, set such election aside on the following grounds:

> (1) That Petitioner had prevented three persons from entering the company premises to cast ballots even though such persons were not eligible to vote; and
>
> (2) That an unidentified and indeterminate number of Petitioner's supervisors engaged in individual interviews with an unidentified and indeterminate number of employees prior to the election and allegedly urged such employees to vote against the union.

Petitioner was not afforded any hearing with respect to the Union's objections to the election, and the Board's Regional Director's decision to set such election aside was based entirely upon his ex parte investigation (Rl, 53-92).

With respect to the 43 challenged ballots the Board's Regional Director sustained 17 of such challenges and ruled that such employees were not entitled to vote in the election (Rl, 91). No hearing was conducted by the Board's Regional Director with respect to whether or not such employees were entitled to vote in the election, and the determination on his part that they were not entitled to vote was based solely on his ex parte investigation.

Petitioner timely filed with the Board its "Request For Review" of the Board's Regional Director's Order setting aside the election and of his determination with respect to the challenged ballots and, in requesting a hearing with respect to such Order, pointed out that in arriving at his decision the Regional Director had made a number of factual findings which Petitioner offered to prove were erroneous (Rl, 92-117). This request was summarily denied by the Board (Rl, 119).

In February of 1965, a second election was held and in the second election 388 votes were cast for the Union, 295 votes were case against the Union, and 58 votes were challenged (Rl, 126).

During the course of the second election, 15 of the employees whose votes had been challenged in the prior election and whom the Board's Regional Director had found ineligible to vote as a result of his ex parte investigation, presented themselves at the polls to vote. Thirteen of such individuals were refused a ballot by the agents of the Board's Regional Director, and two of such individuals were allowed to vote challenged ballots after questioning by such Board agents (Rl, 135-165).

Petitioner filed its Objections To Conduct Affecting The Results Of The Election and requested a hearing on such Objections (Rl, 128-162). Therein Petitioner strenuously insisted that the conduct of the Board's agents in refusing to allow the 13 employees to cast ballots in the election had prejudicially affected the outcome of such election and requested a hearing in order that such fact might be estab-

lished. *The Board's Regional Director, without conducting any hearing of any kind, overruled all of Petitioner's objections to such election and certified the Union as the bargaining agent of Petitioner's employees* (Rl, 164-172). Petitioner timely filed its "Request For Review" with the Board (Rl, 173), and such request was summarily refused (Rl, 190-191).

The Union demanded that Petitioner bargain with it and Petitioner declined to bargain on the ground that the Union was not the duly certified bargaining agent of Petitioner's employees. The Union filed an unfair labor practice charge against Petitioner alleging that Petitioner was guilty of the unfair labor practice of refusal to bargain (Rl, 191-194). The Regional Director then issued his Complaint and Notice of Hearing (Rl, 195). However, prior to any hearing on the Complaint, the Board's General Counsel filed a Motion For Summary Judgment and asserted that Petitioner should be found to have committed the alleged unfair labor practice solely on the pleadings in the case (Rl, 351). In response to this Motion, the Petitioner filed its Offer Of Proof (Rl, 311) wherein it again requested a hearing and offered to prove, in addition to other pertinent factual issues in dispute, that the refusal by the Board agents to allow the thirteen employees to vote in the second election "in the presence of other voters" and at the place and in the manner in which it was done "was calculated to and did in fact persuade voters observing such conduct that the 'Federal Government was taking sides and * * * urging employees to vote for one party', i.e., the Union" (Rl, 325).

In spite of this disputed fact issue and Petitioner's request for a hearing thereon, the Board's Motion For Summary Judgment was granted by the Trial Examiner who recommended that the Petitioner be ordered to bargain with the Union (Rl, 358).

In granting the Motion for Summary Judgment, the Trial Examiner found that he was bound by the refusal of the Board to review the Regional Director's action in setting aside the first election and in refusing to set aside the second election (Rl, 365). Therefore, he concluded that since he was bound by such Board action there was no necessity for conducting a hearing with respect to the alleged unfair labor practice (Rl, 365).

Petitioner duly excepted to the Trial Examiner's Decision (Rl, 371), but such exceptions were overruled by the Board *without a hearing* and the Board ordered Petitioner, upon request, to bargain with the Union (Rl, 382).

The Court of Appeals For the Fifth Circuit, after finding "This case is not without difficulty.", held that "In spite of the difficulties of the case * * *" the order of the Board should be enforced.[4]

REASONS FOR GRANTING THE WRIT

1. The decision of the Court below in the instant case (Appendix B hereto, p. B-1) is directly in conflict with the decisions of the Court of Appeals for the Fourth Circuit in *National Labor Relations Board v. The Lord Baltimore Press, Inc.*, 300 Fed. 2d 671 (Appendix C infra p. C-6) and

[4] 362 Fed. 2d 615, Appendix B hereto infra., p. B-11.

National Labor Relations Board v. Poinsett Lumber & Manufacturing Co., 221 Fed. 2d 121 (Appendix C infra p. C-1) and the decision of the Court of Appeals for the Third Circuit in *National Labor Relations Board v. Capital Bakers, Inc.*, 351 Fed. 2d 45 (Appendix C infra, p. C-12).

In the Poinsett case a certification election was conducted under the supervision of the Board and the Union received a very slight majority of the votes cast. The employer contended that the Union's victory was achieved as a result of threats and pressures exerted on behalf of the Union and, as Petitioner did in this case, duly filed Objections to the Election raising substantial questions as to the conduct of the Union. The Employer also requested a hearing with regard to such objections.

Instead of ordering a hearing the Board, as in this case, acted upon the investigation report of its Regional Director and certified the Union as Bargaining Representative notwithstanding the objections of the Company and its request for a hearing. At the unfair labor practice hearing the Company offered evidence of the threats and coercion of which it alleged the Union had been guilty but this evidence was excluded by the Trial Examiner.

In setting aside the order of the Board finding the Employer guilty of the unfair labor practice of refusal to bargain the Court, after citing Section 102.61 of the Rules and Regulations of the Board, held:

> "If the Board had granted a hearing in accordance with this rule,[5] the evidence taken thereon would have been

[5] Section 102.61 of the Rules & Regulations of the National Labor Relations Board.

made a part of the record in the representation proceeding and would have been before the Board in the unfair labor practice hearing and before this court on the review of the Board's action taken with respect thereto. 29 U.S.C.A. 159(d). The Board, however, did not grant a hearing to the company but acted upon an investigation made by its Regional Director at which the company was given no opportunity to present the evidence upon which it relied in support of the substantial questions which it had raised as to the validity of the election by the exceptions which it had filed thereto. The Board determined that the questions were not substantial on the basis of the report filed by the Regional Director without affording the company an opportunity to be heard and without having before it the evidence upon which the Regional Director had based his report. Under such circumstances, we think that the company was entitled to present its evidence at the unfair labor practice hearing before the Trial Examiner and that the order should be set aside and the cause remanded to the Board in order that the evidence may be taken and considered by the Board in passing upon the validity of the election.

If a hearing had been held and the evidence had been taken and passed upon by the Board in the representation proceeding, the Board would not be required to go into the matter again in the absence of special circumstances showing that it was in the interest of justice that this be done; *but the evidence has not been taken nor a hearing accorded the company at any time even though substantial questions affecting the validity of the election had unquestionably been raised by its exceptions. We think it is entitiled to a hearing at some stage of the proceedings so that it may produce the evidence upon which it relies for consideration by the Board and for consideration by this court in proceedings to enforce or set aside the Board's order.*" (Emphasis added)

In the instant case Petitioner has been denied a hearing with respect to whether or not the first election should have

been set aside, whether or not the 13 employees found by the Board's Regional Director to be supervisors were in fact supervisors, whether or not the second election should have been set aside, and whether or not the Union is the duly certified bargaining agent of Petitioner's employees. Certainly "at some stage of the proceeding" it should be entitled to a hearing in order that this Court may have some record upon which to base its decision as to whether or not the Board's order should be enforced.

In the Baltimore case, the employer resisted the Order of the Board requiring it to bargain with the Union upon the basis that the election favoring the Union as the collective bargaining representative of Baltimore's employees was unfairly conducted. In such case the employer contended that immediately prior to the election, supervisory personnel engaged in organizing and other activities on behalf of the Union. The Board's Regional Director, as in this case, conducted an ex parte investigation and concluded that the employer's objection should be overruled. Baltimore filed exceptions to this finding of the Regional Director, and the Board denied such exceptions without a hearing. Upon Baltimore's refusal to bargain with the Union, the Board issued a Complaint accusing Baltimore of the unfair labor practice of refusal to bargain.

Upon hearing on this Complaint, Baltimore offered evidence purporting to show that one of its supervisors had engaged in organizing and other activities on behalf of the Union. This evidence the Trial Examiner declined to hear because he was of the opinion that as the Board had already ruled on such issue, the question was no longer open. In

setting aside the Board's Order and directing the Board to hear evidence with respect to Baltimore's objection to the election, the Court again held that as in the Poinsett case the employer was "* * * entitled to a hearing at some stage of the proceedings * * *".

In the Capital Bakers case, the Union challenged two ballots in a certification election. The Board's Regional Director sustained one of the challenges on the basis of an ex parte investigation. The employer requested and was denied a hearing on the question of the challenged ballot. The Board denied the employer's Request for Review. At the hearing before the Trial Examiner in the unfair labor practice proceeding, the Employer challenged the finding of the Regional Director with respect to the challenged ballot, but the Trial Examiner rejected an offer of evidence with respect to such challenged ballot on the ground that such issue had already been determined by the Board's denial of the Petition for Review. In considering whether or not the employer was entitled to a hearing, the Court made the following observations:

> "The extensive nature of the Regional Director's report in which he details the results of his investigation of the supervisory nature of the duties of the challenged employee clearly establishes the existence of such 'substantial and material factual issues'. The printed record contains over five pages of discussion of the factual bases for his determination. Yet all of the evidence upon which he relied is derived from statements which were not subject to cross-examination or confrontation or to any legal tests for determining their use or weight as evidence * * *.

> * * * The Regional Director's report on the post-election ballot challenges reveals that he at least collected a considerable amount of information, whatever probative value it may have to support a conclusion that the employee was supervisory. Respondent requested an opportunity to have these facts determined by a hearing. This was denied, and its subsequent request to the Board for hearing was denied. The nature of the evidence which respondent wished to present is revealed both in its Request for Review and its offer of proof before the Trial Examiner on the unfair labor practice proceeding. The respondent there set forth in detail several factual matters which it offered to prove to contradict facts found by the examiner in his report based on ex parte investigation. Respondent's offer of proof also contained clearly relevant facts which were not mentioned in the Regional Director's findings. *We are not concerned with the question of whether or not the evidence considered by the Regional Director is sufficient to support his findings, or whether the rejected evidence of respondent would overcome the findings; we are solely concerned with the fact that the offer and the findings raise a substantial conflict of fact which the Board's Rules and Regulations require to be determined by a hearing. If this was not apparent to the Board at any prior stage it became clearly apparent at the Trial Examiner's hearing. The circumstances compelled a hearing, at the very least, at this state.*" (Emphasis added.)

As reflected by the quoted portions of the Court's opinion, the Court noted that the printed record contained over five pages of discussion of the factual bases for the Board's Regional Director's determination that the challenge to the employee's ballot should be sustained. In this connection, the Petitioner would point out to the Court that the printed record in this case reflects that approximately 29 pages of

such record are made up of the Board's Regional Director's "* * * discussion of the factual bases for his determination."

As has been pointed out in the statement hereof, the Trial Examiner felt that he could not hear evidence with respect to whether or not the Board's Regional Director was justified in setting aside the first election or with respect to whether or not he was justified in refusing to set aside the second election. This opinion of the Trial Examiner was based upon his conclusion that since the Board had refused to review these actions of its' Regional Director, such actions were no longer open to question. This finding of the Trial Examiner has been affirmed by the Court of Appeals for the Fifth Circuit and is in direct and irreconciable conflict with the decisions in the Poinsett, Baltimore and Capital cases cited above.

Obviously the decisions in the Poinsett, Baltimore and Capital cases are correct and the decision of the Court below in the instant case should be reversed. Otherwise the Petitioner will have been deprived of its inalienable right to due process of law by the refusal of the Board and the Court below to afford Petitioner a hearing in order that it may present evidence in support of its contentions and cross-examine those witnesses upon whom the Board's Regional Director relied in reaching his decision.

That the decisions in the Poinsett, Capital and Lord Baltimore cases are correct is clearly reflected by the fol-

lowing holding of this Court in *NLRB v. Indiana and Michigan Electric Company*, 318 U.S. 9, 63 Sup. Ct. 394, 87 L. Ed. 579.

> "The Act accords a great degree of finality to the Board's findings of fact, and this Court has been insistent that the admonition of the Act be strictly observed. But courts which are required upon a limited review to lend their enforcement powers to the Board's orders are granted some discretion to see that the hearings out of which the conclusive findings emanate do not shut off a party's right to produce evidence or conduct cross examination material to the issue. The statute demands respect for the judgment of the Board as to what the evidence proves. *But the court is given discretion to see that before a party's rights are finally foreclosed his case has been fairly heard. Findings cannot be said to have been fairly reached unless material evidence which might impeach, as well as that which will support its findings, is heard and weighed*". (Emphasis added.)

Unquestionably it cannot be said that the findings upon which Petitioner in this case has been held to be guilty of an unfair labor practice "have been fairly reached" in light of the fact that Petitioner has been absolutely denied any opportunity to adduce "material evidence which might impeach" the findings of the Regional Director.

Although other courts of appeals and this Honorable Court have stated that Petitioner is entitled to be heard in this matter it is respectfully submitted that Petitioner has been denied a hearing on at least four separate occasions during the course of this proceeding. At some stage

of the proceeding hearings should have been had on the following very hotly contested factual issues:

(1) Was the Board's Regional Director justified in setting aside the first election in which a majority of the employees voted against the Union as their Bargaining Agent? How can this Court, or any other court, know without a record upon which to base its review? Approximately 3½ pages of the record are devoted to the Board's Regional Director's discussion of his reason for setting such election aside. Such discussion is replete with statements such as the following: "Employees testify . . " (Rl, 67) "Employee Witnesses testify . . " (Rl, 67) "They further testify . ." (Rl, 67) "The individual supervisors state . . " (Rl, 68) Where did all this testimony take place? Who gave all of this testimony? When did these employees testify? Certainly no such testimony appears in this record because no hearing was conducted with respect to this matter.

How can it be denied that Petitioner was not entitled to a hearing with respect to all of this "testimony". At the very least it would appear that justice and fair play would dictate that Petitioner should be entitled to know the names of the people who gave all of this testimony. Unquestionably under *Jencks v. U. S.*, 353 U.S. 657, 77 Sup. Ct. 1007, 1 L. Ed. 2d 1103 Petitioner was entitled to at least read any statement given by these "Employee witnesses" and to cross-examine such "employee witnesses."

(2) Was the Board's Regional Director justified in finding that thirteen of the employees whose votes were challenged were supervisors and not entitled to vote? More than 14 pages of the Record (Rl, 76-91) are devoted to the Regional Director's discussion of the facts upon which he bases his conclusion that these employees are supervisors. Where did be get these facts? Who furnished this information? Is it correct? How can this Court or any other court know, because no hearing was conducted with respect thereto.

Here it should be pointed out that in this case the right of 13 individuals to vote in a matter vitally affecting their very livelihood has been denied and there is absolutely no record upon which this Court can base its consideration of whether or not such denial is justified. As pointed out by this Honorable Court, the right to vote is "precious" and "fundamental"[6] and certainly no employee should be denied the right to vote in a matter affecting whether or not he will be represented by Union without at least some semblance of a hearing.

(3) Was the Board's Regional Director justified in finding that the action of the Board Agents in refusing to allow 13 employees to vote, committed in the presence of other employees, did not affect the outcome of the election? What evidence did the Board's Regional Director base this decision on? It seems rather strange that the Board's Regional Director could conclude that the Petitioner's refusal to allow *three* employees to vote was sufficient to justify setting aside the first election but that the Board Agent's refusal to allow *thirteen* employees to vote was not sufficient to justify setting aside the second election.

(4) Was Petitioner obligated to bargain with the Union in this matter? Certainly not if the Regional Director was unjustified in setting aside the first election or in refusing to set aside the second election. However, no hearing has been had on this issue because a summary judgment was entered with respect thereto, even though the Petitioner strongly contested all of the factual findings of the Regional Director with respect to setting aside the first election, refusing to set aside the second election and his finding with respect to the supervisory status of the thirteen challenged employees. In this connection Petitioner also, at every possible juncture, demanded a hearing and offered proof that all such findings of the Regional Director were erroneous (Rl,

[6] *Harper v. Virginia State Board of Elections*, 86 Sup. Ct. 1079.

92-117, Rl, 128-163, Rl, 173-190, Rl, 214-223, Rl, 311-327, Rl, 371-382).

2. Unquestionably the questions presented in this case are of vital importance to the administration of the Labor Management Relations Act and settlement of this important question by this Honorable Court is plainly in the public interest because if the decision of the Court below is allowed to stand, all employers subject to such Act are at the mercy of the unbridled whim and caprice of the Board's Regional Directors.

As set out in the Poinsett, Baltimore and Capital cases, any employer at some stage in an unfair labor practice proceeding should be entitled to a hearing before it is found guilty of the unfair labor practice of refusal to bargain. Unquestionably, under all substantive and procedural rules regarding summary judgment practice, no such judgment should be entered when important factual issues have been raised by the party resisting a motion for summary judgment.

However, Petitioner has been unable in its research to find any case wherein this Court has expressed its views on this question. Certainly, this question should be settled by this Honorable Court in order that the administration of the Labor Management Relations Act will be uniform throughout these United Staates.

The extreme vice of the decision of this case is readily apparent when one considers the possible consequences which can ensue in cases of this type. For the purpose of illustrating such vice, let us assume that in a hypothetical

situation an election is conducted wherein the majority of the votes are cast against the petitioning union and the union challenges the ballots of all employees with the exception of the union organizing committee. Then let us assume that the Regional Director, for reasons of his own, wishes the union to win such election and therefore sets such election aside based upon some alleged ex parte investigation and finds that none of the employees whose votes were challenged in the first election are entitled to vote in the second election. Thereafter the employer files a Request for Review with the Board and such Request is denied. The Regional Director, in furtherance of his desire that the union win such second election, then refuses to allow any employee to vote in the election with the exception of the members of the union organizing committee. Let us then assume that the union wins such election and the employer files objections to the election asserting that the conduct of the Board's agents in refusing to allow his employees to vote affected the outcome of the election. Let us further assume that the Regional Director overrules such objections and the Board refuses the employer's Request for Review.

It then necessarily follows that in a subsequent unfair labor practice proceeding the Trial Examiner will find, as the Trial Examiner did in this case, that he is bound by the refusal of the Board to review the action of the Regional Director in setting aside the first election and in refusing to set aside the second election. Under such facts, the Trial Examiner, if the decision in this case is allowed to

stand, would be justified in granting a summary judgment with respect to the alleged unfair labor practice of refusing to bargain with the union. Certainly, Congress in enacting the Labor Management Relations Act and the Administrative Procedure Act, never contemplated that an administrative body would have the power by such procedural gymnastics, to deny any citizen of these United States due process of law.

3. Unquestionably the Petition for a Writ of Certiorari should be granted because the character of reasons for granting the same fall squarely within the purview of this Honorable Court's Rule 19. As pointed out hereinbefore the Court below has decided a federal question of substance which has not heretofore been determined by this Court and such decision of the court below conflicts with the decisions of two other Courts of Appeal. Petitioner further submits that in denying Petitioner due process of law by refusing to afford Petitioner any hearing before finding it guilty of an unfair labor practice the court below has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Honorable Court's power of supervision.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

FRITZ L. LYNE,

Fritz Lanham Lyne

CERTIFICATE OF SERVICE

I, FRITZ L. LYNE, attorney for Petitioner, certify that on this the 18th day of January, 1967, pursuant to Rule 33, Supreme Court Rules and in full compliance therewith, a copy of the above and foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit was mailed to The Solicitor General, Department of Justice, Washington 25, D. C., Marcell Mallet-Prevost, National Labor Relations Board, 1717 Pennsylvania Avenue, N. W., Washington, D. C., Mr. John Lavey, Counsel for the General Counsel, Room 8A24 Federal Office Building, 918 Taylor Street, Fort Worth, Texas 76102, and Mr. Steve R. Mauser, Field Representative, United Packinghouse, Food and Allied Workers of America, AFL-CIO, 2350½ North Main Street, Fort Worth, Texas, by depositing said copies in the United States mail, properly addressed, first class postage prepaid, certified return receipt requested, and the foregoing briefs mailed to The Solicitor General and Marcel Mallet-Prevost were mailed via air mail, postage prepaid.

Fritz Lanham Lyne

Fritz L. Lyne